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In The

# Supreme Court of the United States

October Term, 1995

SYSTEMS FUEL, INC., AND
GENERAL MARINE TOWING COMPANY, INC.,

*Petitioners,*

v.

BOBBY LEON ALEXANDER,

*Respondent.*

**On Petition For Writ Of Certiorari To The Supreme Court Of Louisiana**

## BRIEF IN OPPOSITION

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## STATEMENT OF THE CASE

Respondents respectfully oppose the petition for writ of certiorari. The petition assails the Louisiana Supreme Court for making holdings never in fact made, on issues never in fact presented to the Court.

On June 12, 1989, Respondent, Bobby Leon Alexander, brought suit against Systems Fuel and General Marine Towing for injuries sustained on December 22, 1988, while working for General Marine Towing. Plaintiff-Respondent then filed a Motion to sever the **maintenance and cure** claims, which was granted by the Court on October 16, 1992. Trial on the **maintenance and cure** claims was held on April 7, 1993, and, on June 4, 1993, Judge Robert Katz entered judgment dismissing the petition for **maintenance and cure**. The Louisiana Fourth Circuit Court of Appeal affirmed on March 29, 1994, in the matter entitled *Alexander v. Systems Fuel, Inc.*, 93-CA-1929 (La. App. 4th Cir. 1994). In its review, the Fourth Circuit held that "plaintiff reached Maximum Medical Recovery from the 1988 fall on January 6, 1989," after which defendant was no longer liable for plaintiff's **maintenance and cure**. Plaintiff did not appeal this ruling.

In a pretrial hearing on September 29, 1994, the trial court ruled that it would permit plaintiff to present evidence of past lost wages, but only from December 22, 1988 through January 6, 1989. The court also ruled that as to the issue of pain and suffering, it would permit plaintiff to present evidence of his pain and suffering, but that

plaintiff could not present evidence of medical treatment.[1]

In the "Reasons For Judgment," the court explained that its ruling was designed to avoid re-litigating the medical issues.[2] The trial court conceded that, although the Court found that maximum cure was reached by January 6, 1989,

> "it could very well be that the plaintiff continued to experience pain and suffering beyond this date. Hence, the plaintiff may put on evidence about his pain and suffering beyond January 6, 1989, but he may not put on additional medical testimony to this effect. Likewise, the plaintiff may put on evidence of loss wages through January 6, 1989, but may not provide any evidence of any lost wages beyond that time."[3]

It is from the September 29, 1994 judgment that plaintiff appealed to the Louisiana Fourth Circuit. The Louisiana Fourth Circuit affirmed the trial court's judgement that the plaintiff reached "maximum medical improvement" on January 6, 1989, but also incorrectly held that, under the doctrine of collateral estoppel, this factual determination precluded any claim for pain and suffering, or lost wages. It is only this ruling by the

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[1] Please see Petitioners' appendix 13a, Judgment On Rule to Define Issues/Res Judicata and Collateral Estoppel.

[2] Please see Petitioners' appendix 14a-16a, Civil District Court's Reasons For Judgment.

[3] *Id.* Petitioners' appendix 14a-16a, Civil District Court's Reasons For Judgment.

Fourth Circuit that the plaintiff appealed to the Louisiana Supreme Court.

In reversing the lower appellate court, the Louisiana Supreme Court apparently concluded that the lower court erred by ruling that it would not allow evidence of Mr. Alexander's future wage loss to be admitted at the trial of negligence and unseaworthiness. The Louisiana Supreme Court also apparently concluded that the lower court erred by ruling it would not allow evidence of Mr. Alexander's medical treatment for pain and suffering after January 6, 1989 to be admitted at the trial of negligence and unseaworthiness. The only reasonable conclusion is that the Supreme Court of Louisiana held that collateral estoppel was not applicable based on these given facts.

The Louisiana Supreme Court's holding was correct. The doctrine of collateral estoppel is not applicable *in this case*. The factual finding in the prior action will be given collateral estoppel effect *only* if the factual finding was *necessary* to the determination of the prior action. An incidental or collateral determination of an issue that was not material in the prior action does not foreclose reconsideration of that issue in the later litigation in which the issue is material. 1 B J.W. Moore and J.D. Lucas, *Moore's Federal Practice* Para. 0.443 [5] (2d ed. 1995).

In summary, *all* that was at issue in the **maintenance and cure** trial was the date at which the plaintiff had reached maximum medical recovery (the date at which further medical treatment was not going to further improve his condition). Maximum medical improvement does not encompass or preclude a plaintiff from asserting

a claim for pain and suffering and lost wages. Whether Bobby Alexander had returned to full health, or was able to go back to work, was not at issue in that trial. Federal collateral estoppel does not prevent the plaintiff from attempting to prove at the trial of his negligence and unseaworthiness claims that his work related injury did affect his medical condition and/or his ability to work after January 6, 1989. The conclusion of the Fourth Circuit was erroneous and therefore reversed by the Louisiana Supreme Court to prevent material harm to Bobby Alexander. On August 23, 1996, Systems Fuel, Inc. filed this petition for Writ of Certiorari.

### A. Correction of Misstatements in the System Fuel, Inc., et al's Petition for Writ of Certiorari

Respondent herein addresses certain assertions made by Petitioners. First, Petitioners, in their *Question Presented*, framed the issue below in pertinent part: "Whether. . . . the need for Uniformity of Admiralty and Maritime Law demand that the Louisiana state courts, **which do not recognize the substantive doctrine of collateral estoppel**, apply Federal Maritime Law which does recognize said doctrine . . . " (emphasis added). Petitioners' statement in this regard is erroneous; the Louisiana state courts clearly recognize the principle of collateral estoppel. See *State v. Bolden*, 639 So.2d 721 (La. 1994), *State v. Miller*, 571 So.2d 603 (La.1990), *State v. Brooks*, 541 So.2d 801 (La. 1989).

Moreover, a recent decision by the Louisiana Supreme Court is in direct contrast to Petitioners' suggestion that Louisiana Courts ignore Federal Maritime Law,

including the **substantive** doctrine of collateral estoppel. In *Milstead v. Diamond M Offshore Inc.*, 676 So.2d 89 (La.1996), the Louisiana Supreme Court stated "Generally, state courts exercising concurrent maritime jurisdiction are bound to apply substantive federal maritime statutory law and to follow United Sates Supreme Court maritime jurisprudence. *Milstead v. Diamond M Offshore Inc.*, 676 So.2d 89 (La.1996) citing *Southern Pacific Company v. Jensen*, 244 U.S. 205, 37 S.Ct. 524, 61 L.Ed. 1086 (1917); *Green v. Industrial Helicopters*, 593 So.2d 634 (La.1992), citing *Powell v. Offshore Navigation, Inc.*, 644 F.2d 1063, 1065 n.5 (5th Cir.1981). Thus it is apparent that Louisiana **does** recognize the characteristic features of general maritime law and that the decision of the Louisiana Supreme Court does not interfere with the proper harmony and uniformity of that law.

Additionally, the Petitioners' erroneous assertion that Louisiana does not recognize collateral estoppel is apparently based on Louisiana cases that are not maritime or admiralty in substance. Please see page 15 of Petitioners' writ where Petitioners cite *SJ v. PM*, 586 So.2d 662 (La. Ct. App. 1991), *Vicknair v. Hibernia Building Corp.*, 479 So.2d 904 (La.1983), *Dart v. Ehret*, 466 So.2d 1336 (La. Ct. App. 1985), *writ denied*, 468 So.2d 575 (1981), *Sklar v. Sklar*, 387 So.2d 1308 (La. Ct. App. 1980). These cases are not remotely maritime or admiralty in nature. Accordingly, the Petitioners' assertion that Louisiana State courts do not recognize collateral estoppel in admiralty and maritime law is unavailing.

Secondly, the Louisiana Supreme Court in its decision in this case held that collateral estoppel did not apply "to this case", evidently not because Louisiana

does not recognize collateral estoppel, but rather simply because an issue of ultimate fact which is the subject matter of this litigation had not been determined as set forth below.

To illustrate the Louisiana Supreme Court granted Respondent's writ of certiorari, unanimously reversing the Court of Appeal on the basis that: "Collateral estoppel does not apply *in this case.*" (Emphasis added). It should be apparent that the decision was not based on the principle that Louisiana does not recognize collateral estoppel, but rather on the grounds that whether the plaintiff had returned to full health, or was able to go back to work, was not at issue in that trial. Accordingly, federal collateral estoppel does not prevent the Respondent from attempting to prove at the trial of his negligence and unseaworthiness claims that his work-related injury did affect his medical condition and/or ability to work after January 6, 1989.

Finally, Petitioners, in their Statement of the Case, makes another inadvertent misstatement. On page six (6) in paragraph two Petitioners state " . . . the Supreme court of Louisiana reversed the Appellate Court ruling that collateral estoppel *did not* apply to admiralty proceedings." Again, the Louisiana Supreme Court did not ever state this as a principle of law. Petitioners' statement is clearly an incorrect quote. Petitioners repeat the above assertion in several different forms which for Respondent to address now would be repetitive.

## FACTUAL BACKGROUND

On December 22, 1988, Mr. Alexander, a Jones Act Seaman, slipped while on board the M/V GLADYS R and fell approximately ten to fifteen feet onto a steel deck. Mr. Alexander was knocked unconscious as a result of striking the steel deck, and an ambulance transported Mr. Alexander to the Pendleton Memorial Hospital in New Orleans, Louisiana. Mr. Alexander remained at Pendleton Memorial for five (5) days due to the injuries resulting from a concussion as well as from severe neck and back trauma.

Mr. Alexander's employer sent him to Dr. Robert Cooper for his continued complaints of headaches and back pain. On January 6, 1989, only ten (10) days after Pendleton Memorial Hospital released Mr. Alexander, Dr. Cooper determined that Mr. Alexander could return to work because he had achieved maximum medical recovery. However, despite returning to work for a relatively short period of time, Mr. Alexander continued to experience headaches, back pain, and neck pain. He sought treatment from his family physician, Dr. John Smoot.

On April 20, 1989, Dr. John Smoot, a family practitioner in Batesville, Mississippi, examined Mr. Alexander, and detected muscle spasms in Mr. Alexander's legs and observed restricted motion in Mr. Alexander's back. As a result, Dr. Smoot advised Mr. Alexander to refrain from working for at least thirty days, and to see a neurosurgeon, Dr. John Frenz.

On April 25, 1989, Mr. Alexander was examined by Dr. John Frenz, a neurosurgeon practicing near Jackson, Mississippi. Dr. Frenz conducted a physical examination

of Mr. Alexander and made a preliminary diagnosis of chronic sprain and strain, ridiculopathy, possibly disk displacement, and nerve root compression. Dr. Frenz additionally recommended that Mr. Alexander be admitted to a hospital for additional diagnostic treatment.

As a result of Dr. Frenz's examinations, counsel for Mr. Alexander made demand on the defendants requesting that defendants reinstate Mr. Alexander's **maintenance and cure**. Defendants refused to reinstate **maintenance and cure** payments, and the parties litigated this issue at the maintenance and cure trial. While defendant's prevailed on the issue of Mr. Alexander's entitlement to **maintenance and cure**, the parties did not litigate, nor did the court rule on the issues of Mr. Alexander's entitlement to damages for his pain and suffering, or his lost wages.

## SUMMARY OF ARGUMENT

This case presents legal issues that were correctly decided by the Louisiana Supreme Court. In this instance, the trial court incorrectly decided that Plaintiff-Respondent could not present, at the trial of negligence and unseaworthiness, any evidence of future wage loss, past wage loss, or medical testimony regarding Mr. Alexander's pain and suffering beyond the date of maximum medical recovery, January 6, 1989. In its Reasons for Judgment, the trial court conceded that such future pain and suffering may exist, but all medical evidence would be suppressed in the interest of avoiding a re-litigation of the medical issues. From this judgment, Respondent

herein appealed to the Louisiana Fourth Circuit Court of Appeal which in a 3-2 decision upheld the trial court. The Louisiana Supreme Court unanimously reversed the Louisiana Fourth Circuit Court of Appeal.

## I.

The Petitioners' concern for re-litigating prior issues is not applicable here, because the Plaintiff-Respondent did not present claims for lost wages or pain and suffering at the trial for **maintenance and cure**. Plaintiff-Respondent's claims for future wage loss and future pain and suffering are not barred by the doctrine of collateral estoppel, because the issues of wages and pain and suffering were not elements of any of the damages claimed in the **maintenance and cure** trial.

## II.

The Louisiana Supreme Court was correct in its ruling. That ruling, in effect, permits Mr. Alexander to present evidence of his future loss of earning capacity and past wage loss at the trial of negligence and unseaworthiness. Mr. Alexander's claims in the trial for **maintenance and cure** did not address Plaintiff-Respondent's claims of lost wages after January 6, 1989, nor did it address claims for pain and suffering. Moreover, the trial court's decision inconsistently recognized Plaintiff-Respondent's claim for future pain and suffering and his claim for wages lost as a result of that pain and suffering, but inexplicably denied Respondent the opportunity to present all relevant evidence to support those claims.

## III.

The lower court expressly recognized the validity of Plaintiff-Respondent's claim for future pain and suffering, but it erred when it refused to allow evidence of Mr. Alexander's medical treatment for such pain and suffering. The inconsistency of that ruling cannot be justified by the legal doctrines of res judicata or collateral estoppel, nor is it justified as a simple matter of fairness. The Trial Court's judgment, which suppressed all *medical evidence* that plaintiff seeks to introduce in support of future pain and suffering, wholly without legal foundation, and obviously prejudices the claimant's rights to present all relevant evidence in support of his case. The Louisiana Supreme court agreed.

## IV.

Respondent asserts that the Louisiana Supreme Court was correct in its application and/or interpretation of the principles of Maritime law. Louisiana state courts clearly recognize collateral estoppel and do apply it consistently and uniformly in maritime cases; however, the facts of the instant case do not warrant the application of collateral estoppel. Accordingly, this Honorable Court should affirm the decision of the Louisiana Supreme Court.

## ARGUMENT

In its September 29, 1994 "Reasons For Judgment," the trial court explained that the ruling was designed to

avoid re-litigating the medical issues. The court found that

> Maximum cure was reached by January 6, 1989, but that it could very well be that the plaintiff continued to experience pain and suffering beyond this date. Hence, the plaintiff may put on evidence about his pain and suffering beyond January 6, 1989, but he may not put on additional medical testimony to this effect. Likewise, the plaintiff may put on evidence of loss wages through January 6, 1989, but may not provide any evidence of any lost wages beyond that time.[4]

Respondent contends that the Petitioners' position is legally erroneous, conceptually illogical, and unduly burdensome to the Respondent's interests.

## I. The Petitioners' concern for "re-litigating" prior issues is unfounded; Plaintiff-Respondent's claims are not barred by Res Judicata or Collateral Estoppel.

### A. The Petitioners' concern for "re-litigating" prior issues is unfounded, because the Plaintiff-Respondent did not present claims for lost wages or pain and suffering at the trial for Maintenance and Cure.

The issues set forth in the **Maintenance and Cure** trial were presented for the sole purpose of making the

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[4] Please see Petitioners' appendix 14a-16a, District Court's Reasons For Judgment.

Jones Act Employer responsible for Respondent's Maintenance and certain medical bills. At no time during that proceeding were lost wages, pain and suffering, or any other potential damages at issue. The contract at issue in the **maintenance and cure** trial was the date at which the plaintiff had reached maximum medical recovery (i.e. the date at which further medical treatment would not further improve Mr. Alexander's condition), and whether Bobby Alexander was entitled to **maintenance and cure**. Whether Bobby Alexander had returned to full health, whether he was able to go back to work, whether he was experiencing pain and suffering were not issues in that trial. Federal collateral estoppel does not prevent the plaintiff from attempting to prove at the trial of his negligence and unseaworthiness claims that his work related injury did affect his medical condition and/or his ability to work after January 6, 1989. There simply were no necessary factual findings in the **maintenance and cure** action that Bobby Alexander's work related injury no longer affected his medical condition or his ability to work after January 6, 1989. Accordingly collateral estoppel cannot be applied to preclude plaintiff from litigating this very critical issue.

Respondent has conceded that the Judgment regarding the severed **Maintenance and Cure** issues precluded further pursuit of his claim for Maintenance (the Maritime equivalent of Workers' Compensation) and his claim for Cure (the employer's obligation to pay medical bills). Again, because the issue of **Maintenance and Cure** was severed from the remainder of the Jones Act claims, Plaintiff-Respondent maintains his right to pursue his

remedies for future lost wages and future pain and suffering.

Here, Respondent's maintenance claim, the maritime equivalent to worker's compensation, should not bar his remaining negligence claims for future lost wages and pain and suffering.

**B. Respondent's claims for future wage loss and future pain and suffering are not barred by the doctrine of res judicata.**

The doctrine of res judicata, as it existed at all times pertinent hereto, is set forth in the former LSA-R.S. 13:4231[5] as follows:

> The authority of the thing adjudged takes place only with respect to what was the object of the judgment. The thing demanded must be the same; the demand must be founded on the same cause of action; the demand must be between the same parties, and formed by them against each other in the same quality.

The absence of any one of the requisite elements is fatal to the claim of Res Judicata (*McClean v. Smith*, 593 So.2d 422, 424 (La. App. 1st Cir. 1989). *See also Morris v. Fleniken*, 473 So.2d 319, 320 (La. App. 1st Cir. 1985).), and the party urging the exception of res judicata has the burden of proving each essential element. *Lowe v. Prejean*, 540 So.2d 436, 438 (La. App. 1st Cir. 1989). If any doubt exists as to

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[5] The doctrine of res judicata was changed by Acts 1990, No. 521, effective January 1, 1991, for all civil actions filed on or after that date.

the application of the doctrine of res judicata the exception must be denied. *Id* at 437.

In the instant case, the missing element is the "thing" demanded: future wage loss and future pain and suffering. The issues of wages and pain and suffering were not elements of damages in the **Maintenance and Cure** trial. Accordingly, the Petitioners' rights and remedies to pursue future lost wages and future pain and suffering are not affected by the principle of res judicata. *See Sun Finance Co. v. Jackson*, 525 So.2d 532 (La. 1988).

## II. The Louisiana Supreme Court was correct in reversing the appellate court, which erred by disallowing evidence of Mr. Alexander's future wage loss to be admitted at the trial of negligence and unseaworthiness.

The appellate court's decision, which was corrected by the Louisiana Supreme Court, reflected an erroneous presumption that the date of "maximum medical improvement", January 6, 1989, automatically bars any recovery of wage loss after that date. The dismissal of the **maintenance and cure** claims and any determination regarding maximum medical recovery have no bearing on Respondent's claims for lost wages or pain and suffering. **Maintenance and cure** requires the Jones Act employer to pay the seaman's equivalent of Workers' Compensation and medical expenses up to the point of "maximum medical improvement." *See Gaspard v. Taylor Diving and Salvage Co.*, 649 F.2d 372 (5th Cir. 1981), *cert. denied*, 455 U.S. 907 (1982). "Maximum medical improvement" is simply the point at which the Jones Act employer is no longer obligated to pay **maintenance and cure**, the seaman's

equivalent to workers' compensation. *Lirette v. K&B Boat Rentals*, 579 F.2d 960, 969 (5th Cir. 1978). *See also Springborn v. American Commercial Barge Lines, Inc.*, 767 F.2d 89 (5th Cir. 1985).

The date of "maximum medical improvement", which signifies the termination point of an employer's maintenance and cure obligation, does not preclude claims for future wage loss. To illustrate, an injured person who is not at Maximum Medical Improvement may very well be able to earn 100% of his/her wages at the time of injury, for example an attorney, accountant, secretary, etc., who has suffered a severe knee injury. Conversely, a manual laborer with the very same knee injury may never again have the capacity to earn his/her pre-injury wages, even years after having reached Maximum Medical Improvement.

Further, the fact that Respondent may have reached "maximum medical improvement" in no way establishes that his condition permits him to return to full employment, nor does it mean that he does not continue to experience pain and suffering. *See Springborn v. American Commercial Barge Lines, Inc.*, 767 F.2d 89 (5th Cir. 1985); *Pelotto v. L&N Towing Co.*, 604 F.2d 396 (5th Cir. 1979). Even the trial court recognized this distinction in its "Reasons For Judgment," stating that "it could very well be that the plaintiff continued to experience pain and suffering beyond this date."[6]

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[6] Please see Petitioners' appendix 14a-16a, Civil District Court's Reasons For Judgment.

The court correctly recognized that "maximum medical improvement" does not preclude claims of future pain and suffering beyond this date. By the same reasoning, the lower court, as the Louisiana Supreme Court did, should have recognized that maximum recovery does not preclude past or future wage loss. While "it could very well be that the plaintiff continued to experience pain and suffering beyond this date," it could also "very well be that" any pain and suffering beyond this date could have an impact on earning potential and future wage loss. It is factually and conceptually inconsistent to concede that future pain and suffering may exist while barring any attempt to recover for future wage loss resulting from any such pain and suffering.

Finally, the date of maximum recovery cannot preclude a determination of future wage loss, because the **maintenance and cure** analysis considers any factors that are distinct from those which establish wage loss. **Maintenance and Cure** is the employer's obligation to pay benefits to a seaman (maintenance) and medical bills (cure) and is terminated at the point of maximum medical recovery. It is a simple determination which does not consider any possible impact on past or future wage loss. Economic loss, on the other hand, is based upon a detailed economic analysis which takes into account the employee's work history, age, amount of impairment, relevant economic conditions and medical condition. "Maximum medical improvement" is not an element or even a factor in wage loss determination. The term "earning capacity" refers to capability of worker to sell his labor or services in any market reasonably accessible to

him, taking into consideration his general physical functional impairment resulting from his accident, any previous disability, his occupation, age, at time of injury, nature of injury and his wages prior to and after the injury. *Sims v. Industrial Commission*, 460 P.2d 1003, 1006. The entitlement to lost wages or earning capacity does not terminate at "maximum medical improvement." **Maintenance and cure** cannot preclude future wage loss, because, factually, legally, and conceptually, future wage loss embodies distinct issues and requires a separate determination. *See Id.* Accordingly, the issue would not be re-litigated, thus collateral estoppel (issue preclusion) is inapplicable.

## III. The Louisiana Supreme Court reversed the appellate court that erred by disallowing evidence of Mr. Alexander's medical treatment after January 6, 1989 for pain and suffering to be admitted at the trial of negligence and unseaworthiness.

As previously noted, the trial court in its "Reasons For Judgment" conceded that "it could very well be that the plaintiff continued to experience pain and suffering beyond this date."[7] The ruling itself allows Respondent to introduce evidence of future pain and suffering, but rejects any evidence of medical treatment for such pain and suffering beyond January 6, 1989.[8] Evidently the Supreme Court determined that this ruling is unfounded

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[7] Please see Petitioners' appendix 14a-16a, Civil District Court's Reasons For Judgment.

[8] Please see Petitioners' appendix 13a, Judgment On Rule to Define Issues/Res Judicata and Collateral Estoppel.

and prejudicial to the Respondent's claim. Clearly, medical testimony is both relevant and essential to a showing of pain and suffering.

Respondent further contends that there is no credible reason for the exclusion of medical evidence showing future pain and suffering. Any such medical evidence cannot be barred by the doctrine of collateral estoppel, since, first, the trial for **Maintenance and Cure** did not address the issues of future pain and suffering,[9] second, the trial court conceded that Respondent was, in fact, free to pursue these claims.[10]

Finally, under the Louisiana Code of Evidence, Articles 401-403, the evidence of medical treatment after January 6, 1989 should be admissible at trial, since it is wholly relevant to Respondent's claim for future pain and suffering, which was already deemed admissible by the trial court.[11] Under Louisiana Code of Evidence, Article 403, there is no evidence to show that the probative value of any such medical testimony would be outweighed by a danger of unfair prejudice, confusion of the issues, misleading the jury, or by considerations of undue delay or waste of time.

The trial court has expressly recognized Plaintiff-Respondent's right to assert his claim for future pain and

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[9] Please see Petitioners' appendix 13a, Judgment On Rule to Define Issues/Res Judicata and Collateral Estoppel.

[10] Please see Petitioners' appendix 14a-16a, Civil District Court's Reasons For Judgment.

[11] Please see Petitioners' appendix 14a-16a, Civil District Court's Reasons For Judgment.

suffering. Petitioners' interpretation would clearly undermine Respondent's claim by refusing to allow any and all relevant medical evidence, without any apparent justification. Accordingly, the lower court was correctly reversed by the Louisiana Supreme Court. From that reversal Petitioners lodged the present application for writ of certiorari.

## CONCLUSION

The General Maritime law permits severance of **Maintenance and Cure** claims from the main claim and permits a hearing on an expedited basis. *See Tate v. American Tugs, Inc.*, 633 F.2d 1129, 1131 (5th Cir. 1981); *Pacific Steamship Company v. Peterson*, 278 U.S. 130 (1928). The precise rationale for this principle is that such a procedure enables the injured seaman to obtain relief in the nature of regular compensation for subsistence (i.e., Maintenance) and payment of medical bills (i.e., Cure) so that the seaman is not without medical treatment. The seaman's claim for **maintenance and cure** is based on the employer's "contractual obligation" to the seaman and involves an entirely separate element of damages. *See Brister v. A.W.I., Inc.*, 946 F.2d 350, *rehearing denied*, 949 F.2d 1160 (5th Cir. 1991).

The trial court erroneously ruled to suppress Mr. Alexander's evidence of future wage loss and all evidence of his medical treatment after January 6, 1989, relevant to his claims for future pain and suffering. The appellate court erroneously affirmed that such evidence should be barred in order to avoid a re-litigation of these

issues. On a writ of certiorari to the Louisiana Supreme Court the, Respondent herein, asserted and the Louisiana Supreme Court agreed that these issues have neither been litigated nor resolved. Hence, the conclusion of the Fourth Circuit was reversed by the Louisiana Supreme Court to prevent material harm to Bobby Alexander. As a result, the Respondent will be permitted to introduce medical evidence in support of his pain and suffering as well as evidence of lost wages subsequent to January 6, 1989.

Clearly Petitioners' suggestion to this Honorable Court that the Louisiana state courts do not recognize the substantive doctrine of collateral estoppel is clearly a misrepresentation. The Supreme Court of Louisiana simply determined collateral estoppel inapplicable in the instant case. Under the federal law of collateral estoppel, in certain circumstances, a party to a prior action will be bound in a later action by a factual finding made in the prior action. However, the factual finding in the prior action will be given collateral estoppel effect only if the factual finding was *necessary* to the determination of the prior action. "Issue preclusion [i.e., collateral estoppel] attaches only to determinations that were necessary to support the judgment entered in the first action." 18 C.A. Wright, A.R. Miller and E.H. Cooper, *Federal Practice and Procedure* section 4421 at 192 (1981), *quoted in Schiro v. Farley*, 114 S.Ct. 783, at 791 (1994).

All that was at issue in the **maintenance and cure** trial was the date at which the plaintiff had recovered from his injury as much as he was going to – i.e., the date at which further medical treatment was not going to further improve his condition. Whether the plaintiff had

returned to full health, or was able to go back to work, was not at issue in that trial.

Thus, there were no necessary factual findings in the **maintenance and cure** action that the Respondent's work-related injury no longer affected his medical condition or his ability to work after January 6, 1989. Accordingly, federal collateral estoppel does not prevent the Respondent from attempting to prove at the trial of his negligence and unseaworthiness claims that his work-related injury did affect his medical condition and/or ability to work after January 6, 1989. Accordingly, the ruling of the Louisiana Supreme Court was not contrary to the doctrine of collateral estoppel. Consequently, a review on writ of certiorari is not warranted.

Respectfully submitted,

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